

1 David Gurnick, SBN 115723
2 Steve Feldman SBN 61095
3 Lewitt, Hackman, Shapiro, Marshall & Harlan
4 16633 Ventura Boulevard, 11th Floor
5 Encino, California 91436-1865
6 Phone: (818) 990-2120; Fax: (818) 981-4764
dgurnick@lewitthackman.com; sfeldman@lewitthackman.com
7 Attorneys for Plaintiff Endo Fitness LL, LLC
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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

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13 Endo Fitness LL, LLC, a California
14 limited liability company,
15
16 Plaintiff,
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18 v.
19 F-19 Holdings, LLC, a Delaware
20 limited liability company, F-19
21 Franchising, LLC, a California limited
22 liability company, and Does 1 through
23 25,
24
25 Defendants.

Case No.: 2:22-CV-03124-MEMF-JC

STIPULATED PROTECTIVE
ORDER

[CHANGES MADE BY
COURT TO PARAGRAPH 3]

DISCOVERY MATTER

Court Room: 8B
District Judge: Hon. Maame Ewusi-
Mensah Frimpong
Magistrate Judge: Hon. Jacqueline
Chooljian
Complaint Filed: March 29, 2022

1. **A. PURPOSES AND LIMITATIONS**

26 As at least one of the parties has represented that discovery in this action may
27 involve production of confidential, proprietary, or private information for which
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1 special protection from public disclosure and from use for any purpose other than
2 prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate
3 to and petition the Court to enter the following Stipulated Protective Order. The
4 parties acknowledge that this Order does not confer blanket protections on all
5 disclosures or responses to discovery. The protection it affords from public disclosure
6 and use extends only to the limited information or items that are entitled to
7 confidential treatment under the applicable legal principles. Further, as set forth in
8 Section 12.3, below, this Stipulated Protective Order does not entitle the parties to file
9 confidential information under seal. Rather, when the parties seek permission from
10 the court to file material under seal, the parties must comply with Civil Local Rule
11 79-5 and with any pertinent orders of the assigned District Judge and Magistrate
12 Judge.

13 **B. GOOD CAUSE STATEMENT**

14 Defendants claim this action involves trade secrets, proprietary information,
15 and other valuable research for which special protection from public disclosure and
16 from use for any purpose other than the prosecution of this action is warranted.
17 Such confidential and proprietary materials and information consist of, among other
18 things, confidential business or financial information, information regarding confidential
19 business practices, or other confidential research, development, or commercial
20 information (including information implicating privacy rights of third parties),
21 information otherwise generally unavailable to the public, or which may be privileged or
22 otherwise protected from disclosure under state or federal statutes, court rules, case
23 decisions, or common law. In order to expedite the flow of information, to facilitate
24 the prompt resolution of disputes over confidentiality of discovery materials, to
25 adequately protect information the parties are entitled to keep confidential, to ensure
26 that the parties are permitted reasonable necessary uses of such material in
27 connection with this action, to address their handling of such material at the end of
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1 the litigation, and to serve the ends of justice, a protective order for such information
2 is justified in this matter.

3 The parties shall not designate any information/documents as confidential
4 without a good faith belief that such information/documents have been maintained
5 in a confidential, non-public manner, and that there is good cause or a compelling
6 reason why it should not be part of the public record of this case.

7 **2. DEFINITIONS**

8 **2.1 Action**: The instant action: 2:22-CV-03124-MEMF-JC.

9 **2.2 Challenging Party**: A Party or Non-Party that challenges the
10 designation of information or items under this Order.

11 **2.3 “CONFIDENTIAL” Information or Items**: Information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for protection
13 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
14 Cause Statement.

15 **2.4 Counsel**: Outside Counsel of Record and House Counsel (as well as their
16 support staff).

17 **2.5 Designating Party**: A Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20 **2.6 Disclosure or Discovery Material**: All items or information, regardless
21 of the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced or
23 generated in disclosures or responses to discovery in this matter.

24 **2.7 Expert**: A person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as
26 an expert witness or as a consultant in this Action.

27 **2.8 House Counsel**: Attorneys who are employees of a party to this Action.

House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: Attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.

2.11 Party: Any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: A Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: Persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: Any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: A Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover Protected Material (as defined above), and (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any deposition testimony, conversations, or presentations by Parties

1 or their Counsel that might reveal Protected Material, other than during a court
2 hearing or at trial.

3 Any use of Protected Material during a court hearing or at trial shall be
4 governed by the orders of the presiding judge at that time. This Order does not
5 govern the use of Protected Material during a court hearing or at trial.

6 **4. DURATION**

7 Even after final disposition of this litigation, the confidentiality obligations
8 imposed by this Order shall remain in effect until a Designating Party agrees
9 otherwise in writing or a court order otherwise directs. Final disposition shall be
10 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
11 or without prejudice; and (2) final judgment herein after the completion and
12 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
13 including the time limits for filing any motions or applications for extension of time
14 pursuant to applicable law.

15 **5. DESIGNATING PROTECTED MATERIAL**

16 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

17 Each Party or Non-Party that designates information or items for protection
18 under this Order must take care to limit any such designation to specific material that
19 qualifies under the appropriate standards. The Designating Party must designate for
20 protection only those parts of material, documents, items, or oral or written
21 communications that qualify so that other portions of the material, documents, items,
22 or communications for which protection is not warranted are not swept unjustifiably
23 within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations
25 that are shown to be clearly unjustified or that have been made for an improper
26 purpose (e.g., to unnecessarily encumber the case development process or to impose
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1 unnecessary expenses and burdens on other parties) may expose the Designating Party
2 to sanctions.

3 If it comes to a Designating Party's attention that information or items that it
4 designated for protection do not qualify for protection, that Designating Party must
5 promptly notify all other Parties that it is withdrawing the inapplicable designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Order (see, e.g., second par. of Section 5.2(a) below), or as otherwise stipulated
8 or ordered, Disclosure or Discovery Material that qualifies for protection under this
9 Order must be clearly so designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic
12 documents, but excluding transcripts of depositions), that the Producing Party affix at
13 a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL
14 legend"), to each page that contains protected material. If only a portion or portions
15 of the material on a page qualifies for protection, the Producing Party also must clearly
16 identify the protected portion(s) (e.g., by making appropriate markings in the
17 margins).

18 A Party or Non-Party that makes original documents available for inspection
19 need not designate them for protection until after the inspecting Party has indicated
20 which documents it would like copied and produced. During the inspection and before
21 the designation, all of the material made available for inspection shall be deemed
22 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
23 copied and produced, the Producing Party must determine which documents, or
24 portions thereof, qualify for protection under this Order. Then, before producing the
25 specified documents, the Producing Party must affix the "CONFIDENTIAL legend"
26 to each page that contains Protected Material. If only a portion or portions of the
27 material on a page qualifies for protection, the Producing Party also must clearly

1 identify the protected portion(s) (e.g., by making appropriate markings in the
2 margins).

3 (b) for testimony given in depositions that the Designating Party identifies
4 on the record, before the close of the deposition as protected testimony.

5 (c) for information produced in some form other than documentary and for
6 any other tangible items, that the Producing Party affix in a prominent place on the
7 exterior of the container or containers in which the information is stored the legend
8 "CONFIDENTIAL." If only a portion or portions of the information warrants
9 protection, the Producing Party, to the extent practicable, shall identify the protected
10 portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
12 failure to designate qualified information or items does not, standing alone, waive the
13 Designating Party's right to secure protection under this Order for such material.
14 Upon timely correction of a designation, the Receiving Party must make reasonable
15 efforts to assure that the material is treated in accordance with the provisions of this
16 Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
19 designation of confidentiality at any time that is consistent with the Court's
20 Scheduling Order.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
22 resolution process under Local Rule 37-1 et seq.

23 6.3 The burden of persuasion in any such challenge proceeding shall be on
24 the Designating Party. Frivolous challenges, and those made for an improper purpose
25 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
26 expose the Challenging Party to sanctions. Unless the Designating Party has waived
27 or withdrawn the confidentiality designation, all parties shall continue to afford the
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1 material in question the level of protection to which it is entitled under the Producing
2 Party's designation until the Court rules on the challenge.

3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending, or attempting to settle this Action. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the Action has been terminated, a Receiving
9 Party must comply with the provisions of Section 13 below.

10 Protected Material must be stored and maintained by a Receiving Party at a
11 location and in a secure manner that ensures that access is limited to the persons
12 authorized under this Order.

13 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
14 otherwise ordered by the court or permitted in writing by the Designating Party, a
15 Receiving Party may disclose any information or item designated
16 “CONFIDENTIAL” only to:

17 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
18 as other counsel engaged by the Receiving Party and employees of said Outside
19 Counsel of Record or of other counsel engaged by the Receiving Party to whom it is
20 reasonably necessary to disclose the information for this Action;

21 (b) the officers, directors, and employees (including House Counsel) of the
22 Receiving Party to whom disclosure is reasonably necessary for this Action;

23 (c) Experts (as defined in this Order) of the Receiving Party to whom
24 disclosure is reasonably necessary for this Action and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26 (d) the court and its personnel;

27 (e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound” form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” attached as Exhibit A, unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order unless prohibited by law;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Protective Order. Such notification shall include

1 a copy of this Stipulated Protective Order; and

2 (c) cooperate with respect to all reasonable procedures sought to be pursued
3 by the Designating Party whose Protected Material may be affected.

4 If the Designating Party timely seeks a protective order, the Party served with
5 the subpoena or court order shall not produce any information designated in this action
6 as “CONFIDENTIAL” before a determination by the court from which the subpoena
7 or order issued, unless the Party has obtained the Designating Party’s permission, or
8 unless otherwise required by the law or court order. The Designating Party shall bear
9 the burden and expense of seeking protection in that court of its confidential material
10 and nothing in these provisions should be construed as authorizing or encouraging a
11 Receiving Party in this Action to disobey a lawful directive from another court.

12 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
13 PRODUCED IN THIS LITIGATION**

14 (a) The terms of this Order are applicable to information produced by a
15 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
16 produced by Non-Parties in connection with this litigation is protected by the
17 remedies and relief provided by this Order. Nothing in these provisions should be
18 construed as prohibiting a Non-Party from seeking additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to
20 produce a Non-Party’s confidential information in its possession, and the Party is
21 subject to an agreement with the Non-Party not to produce the Non-Party’s
22 confidential information, then the Party shall:

23 (1) promptly notify in writing the Requesting Party and the Non-Party
24 that some or all of the information requested is subject to a confidentiality agreement
25 with a Non-Party;

26 (2) promptly provide the Non-Party with a copy of the Stipulated
27 Protective Order in this Action, the relevant discovery request(s), and a reasonably
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1 specific description of the information requested; and

2 (3) make the information requested available for inspection by the Non-
3 Party, if requested.

4 (c) If a Non-Party represented by counsel fails to commence the process
5 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the notice
6 and accompanying information or fails contemporaneously to notify the Receiving
7 Party that it has done so, the Receiving Party may produce the Non-Party's
8 confidential information responsive to the discovery request. If an unrepresented
9 Non-Party fails to seek a protective order from this court within 14 days of receiving
10 the notice and accompanying information, the Receiving Party may produce the Non-
11 Party's confidential information responsive to the discovery request. If the Non-Party
12 timely seeks a protective order, the Receiving Party shall not produce any information
13 in its possession or control that is subject to the confidentiality agreement with the
14 Non-Party before a determination by the court unless otherwise required by the law
15 or court order. Absent a court order to the contrary, the Non-Party shall bear the
16 burden and expense of seeking protection in this court of its Protected Material.

17 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
19 Protected Material to any person or in any circumstance not authorized under this
20 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
22 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
23 persons to whom unauthorized disclosures were made of all the terms of this Order,
24 and (d) request such person or persons to execute the "Acknowledgment and
25 Agreement to Be Bound" that is attached hereto as Exhibit A.

26 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
27 **PROTECTED MATERIAL**

1 When a Producing Party gives notice to Receiving Parties that certain
2 inadvertently produced material is subject to a claim of privilege or other protection,
3 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
4 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
5 may be established in an e-discovery order that provides for production without prior
6 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
7 parties reach an agreement on the effect of disclosure of a communication or
8 information covered by the attorney-client privilege or work product protection, the
9 parties may incorporate their agreement in the stipulated protective order submitted
10 to the court.

11 12. MISCELLANEOUS

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
13 person to seek its modification by the Court in the future.

14 12.2 Right to Assert Other Objections. By stipulating to the entry of this
15 Stipulated Protective Order, no Party waives any right it otherwise would have to
16 object to disclosing or producing any information or item on any ground not addressed
17 in this Stipulated Protective Order. Similarly, no Party waives any right to object on
18 any ground to use in evidence of any of the material covered by this Stipulated
19 Protective Order.

20 12.3 Filing Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
22 orders of the assigned District Judge and Magistrate Judge. If a Party's request to file
23 Protected Material under seal is denied by the court, then the Receiving Party may
24 file the information in the public record unless otherwise instructed by the court.

25 13. FINAL DISPOSITION

26 After the final disposition of this Action, as defined in Section 4, within 60 days
27 of a written request by the Designating Party, each Receiving Party must return all
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1 Protected Material to the Producing Party or destroy such material. As used in this
2 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
3 summaries, and any other format reproducing or capturing any of the Protected
4 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
5 must submit a written certification to the Producing Party (and, if not the same person
6 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
7 category, where appropriate) all the Protected Material that was returned or destroyed
8 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
9 compilations, summaries or any other format reproducing or capturing any of the
10 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
11 archival copy of all pleadings, motion papers, trial, deposition, and hearing
12 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
13 reports, attorney work product, and consultant and expert work product, even if such
14 materials contain Protected Material. Any such archival copies that contain or
15 constitute Protected Material remain subject to this Stipulated Protective Order as set
16 forth in Section 4.

17 14. Any violation of this Order may be punished by any and all appropriate
18 measures including, without limitation, contempt proceedings and/or monetary
19 sanctions.

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5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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8 Dated: November 11, 2022 WILLIAMS, KASTNER, & GIBBS PLLC
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10

11 By /s/Theresa H. Rava
12 Theresa Rava
13

14 Attorneys for Defendants
15 F-19 Holdings, LLC and F-19 Franchising, LLC
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17 Dated: November 14 , 2022 LEWITT HACKMAN
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20 By /s/ David Gurnick
21 David Gurnick
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23 Attorneys for Plaintiff
24 Endo Fitness LL, LLC
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27 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED AS MODIFIED.
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29 DATED: November 15, 2022
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32 /s/
33 HON. JACQUELINE
34 CHOOJIAN United States
35 Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on November 15, 2022 in the case of *Endo Fitness LLC, LLC v. F-19 Holdings, LLC et al.*; Case No. 2:22-CV-03124-MEMF-JC.

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: